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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY BONTEMPS,

Defendant and Appellant.

C081147

(Super. Ct. No. 08F06199)

Appointed counsel for defendant Gregory Bontemps asked this court to review the record and determine whether there are any arguable issues on appeal from the denial of defendant's petition for resentencing. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) Finding no arguable error that would result in a disposition more favorable to defendant, we will affirm the judgment.

BACKGROUND

Most of the background facts are taken from *People v. Bontemps* (March 2, 2012, C065072) [nonpublished opinion] (*Bontemps*). In July 2008, Charlene and defendant, her

then husband, got into an argument about her son, Anthony. After Charlene fell asleep, defendant woke her by grabbing her by the hair, pulling her into a sitting position and saying, “Bitch, make me some dinner.” When Charlene fought back, defendant swung her toward the ground and punched her in the back and in the nose. Blood from her nose spread to her hands, face and clothing along with the sheets, floors, furniture, and the walls.

Defendant told Charlene several times he would kill her. He also said if she called the police, she would be “done before they hit the corner.” He told her if she called her son, he would kill her son as well. The threats frightened Charlene because of defendant’s “violent criminal past.” She did not immediately call for help.

Defendant made Charlene clean up her blood, then told her to lay down. Eventually she fell asleep. The following morning, when defendant left the house and went to the store, Charlene called 911. The police took Charlene’s statement and photographed her injuries. She had bruises on her leg and back, a contusion and swelling to her nose, a cut lip, and a sore head.

Defendant wrote Charlene letters trying to persuade her to drop the case, stay away from court and make herself unavailable. He also enlisted his mother’s aid in attempting to convince Charlene to drop the charges against him. Defendant called Charlene from jail up to 20 times a day until she obtained a restraining order. (*Bontemps, supra*, C065072.)

Defendant was convicted of spousal abuse (Pen. Code, § 273.5, subd. (a)),¹ criminal threats (§ 422) and intimidating a witness (§ 136.1, subd. (b)(1)). (*Bontemps, supra*, C065072.) The trial court sustained two strike allegations (§ 1170.12) and

¹ Undesignated statutory references are to the Penal Code.

sentenced defendant to 25 years to life, staying the spousal abuse and witness intimidation sentences pursuant to section 654. (*Bontemps, supra*, C065072.)

Defendant subsequently filed a petition for resentencing pursuant to section 1170.18 (Proposition 47) on March 20, 2015. There is no record of the trial court's ruling on the motion. In addition, defendant filed a petition for resentencing pursuant to section 1170.126 (Proposition 36) on April 6, 2015. The Proposition 36 petition is not in the record but is mentioned in the trial court's written ruling denying the petition.

DISCUSSION

Whether the protections afforded by *Wende*, and the United States Supreme Court decision in *Anders v. California* (1967) 386 U.S. 738 [18 L.Ed.2d 493], apply to an appeal from an order denying a petition brought by sections 1170.126 or 1170.18, remains an open question. Our Supreme Court has not spoken. The *Anders/Wende* procedures address appointed counsel's representation of an indigent criminal defendant in the first appeal as a matter of right and courts have been loath to expand their application to other proceedings or appeals. (See *Pennsylvania v. Finley* (1987) 481 U.S. 551 [95 L.Ed.2d 539]; *Conservatorship of Ben C.* (2007) 40 Cal.4th 529; *In re Sade C.* (1996) 13 Cal.4th 952; *People v. Dobson* (2008) 161 Cal.App.4th 1422; *People v. Taylor* (2008) 160 Cal.App.4th 304; *People v. Thurman* (2007) 157 Cal.App.4th 36; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570.) Nonetheless, in the absence of authority to the contrary, we will adhere to *Wende* in the present case, where counsel has already undertaken to comply with *Wende* requirements.

Appointed counsel filed an opening brief setting forth the facts of the case and asking this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing the opening brief. More than 30 days elapsed and we received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

MAURO, J.

We concur:

/S/
BLEASE, Acting P. J.

/S/
ROBIE, J.